(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. What training have you had in that line?

A. I have gone five years to a school of veterinary medicine. I have a degree of doctor of veterinary medicine.

Q. What school was that?

A. Kansas State College.

Q. What has been your experience in the industry?

A. I worked for the State Department of Agriculture three years on meat and food inspection. I have gone approximately eight weeks to Army schools, the meat and dairy inspection school in Chicago, conducted by the Chicago Quartermaster Depot.

Q. Before or after you entered the service?

A. After I entered the service.

Q. What experience have you had in that line since you have been in the Army?

A. I have spent five years in Army meat and food inspection.

Q. Has your entire service period been engaged in this type of work? A. Yes.

Q. Have you been stationed in the San Francisco Bay area here [217] since your service in the Army?

A. I reported out at the Presidio, San Francisco, on the 25th of November, 1940.

Q. In what capacity were you stationed here?

A. I was assistant station veterinarian at the Presidio of San Francisco.

Q. For how long did you hold that position?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. From 25 November, 1940, to approximately 22 May, 1942.

Q. Then what were you assigned to?

A. I took over the duties of station veterinarian.

Q. How long did you hold that position?

A. Until the 23rd of June, 1944.

Q. Were you transferred then?

A. To the Kansas City Quartermaster Depot.

Q. As station veterinarian at the Presidio, what were your duties?

A. I supervised the inspection of all meat, meat food, dairy products in the San Francisco area.

Q. And by dairy products, what do you mean?

A. Butter, eggs, cheese, poultry, milk.

Q. In that position did you have any supervisory duties over other men?

A. I have from twelve to fifteen officers and approximately forty-five enlisted men working under me as meat and food inspectors.

Q. As assistant station veterinarians what were your duties?

A. My duties were to inspect all food purchased for the armed forces in this area prior to purchase.

Q. Now, you said——

A. In assisting the station veterinarian [218] in his duties as the inspector in charge.

Q. You say purchased for the armed services; purchased by whom? A. By the Government.

Q. By any Government agency for the armed forces?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: Speak up so the reporter can hear you. You will have to answer.

A. Yes.

The Court: The reporter must get it down.

Mr. Houck: Q. Would that include purchases, for instance, for a cargo ship made by the War Shipping Administration? A. No.

Q. It would include only purchases directly for the consumption of the Army, Navy, et cetera?

A. That is correct, and the Marine Corps.

Q. Now, how large an area did your office at the Presidio have jurisdiction over?

A. From Santa Barbara, California, to Santa Cruz and from San Francisco to Modesto, California.

Q. Do you know where Petaluma, California, is?

A. Yes. It is 56 miles north of here, approximately, on highway 101.

Q. Would your jurisdiction cover that town or city? A. Yes.

Q. Do you recall any of the names of the Army inspectors under your supervision at Petaluma?

A. I had a sergeant Klingenberg, and following Sergeant Klingenberg was Sergeant Steffenhagen. [219]

Q. Were they there at different times, or were they both there at the same time?

A. For a short time they were both there together, and then Sergeant Klingenberg was trans-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

ferred and Sergeant Steffenhagen took over the duties as inspector.

Mr. Faulkner: Excuse me. May I get those names?

Mr. Houck: Q. Will you spell the names for the record?

The Court: Those two names.

The Witness: I do not recall the exact spelling of the names. I believe it is K-l-i-n-g-e-n-b-e-r-g, approximately. It has been a long time.

Mr. Hippeli: S-t-e-f-f-e-n-h-a-g-e-n.

The Witness: That is correct.

Mr. Houck: Q. How does the Army assign, if you know this, inspectors to your department? What type of men do they pick?

A. They pick men that have had experience in the field of food processing.

Q. And are these men given any special training in that line before they are assigned to their duties in an office such as this?

A. They usually go to an Army depot for approximately six or eight weeks, if they get the material in that time; if not, they go another six to eight weeks, until they are qualified Army meat and food inspectors.

Q. Is this the same type of school that you attended, yourself? A. That is correct.

Q. Can you give us a brief resume, a bare brief one, of just [220] what is taught in a school such as this, with particular reference to eggs, butter and cheese?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. We are taught, first, the specifications and the regulations under which the products are put up. Then we are taught quality grading.

Q. Are you taught, for instance, the mechanics of candling eggs?

A. The mechanics of candling eggs, scoring butter, and scoring cheese.

Q. During your period of service here at the Presidio have you ever had occasion to make an inspection at the Nye & Nissen plant in San Francisco? A. Yes.

Q. On more than one occasion?

A. On numerous occasions.

Q. How often would you say that you visited the Nye & Nissen plant?

A. At least twice a week, I would say.

Q. And this is over what period?

A. In the early fall of 1941 to approximately the first of 1944.

Q. What type of food products would you inspect at the Nye & Nissen plant?

A. Butter, eggs, cheese.

Q. I would like to have you take an illustration, a typical illustration, and tell us just how it was that you happened to make an inspection there, and what you did when you went to the plant. Start at the time when you are at your office at the Presidio. How would you know that there was food to be inspected at the Nye & Nissen plant?

A. I would receive a call, usually from Mr. Goddard or from Nye & Nissen. He would say that

(Testimony of Lt.-Col. Pearl Hugh Hand.)

they would have 100 cases of eggs for a certain Army installation. [221]

Q. Did you receive any calls from anyone else but Mr. Goddard?

A. Mr. Goddard, Mr. Moncharsh.

Q. Anyone else? A. Mr. Smith.

Q. Did you tell me the majority of your calls were from Mr. Goddard?

A. That is correct.

Q. What would you do then?

A. We would call our sales officer who made the purchases and ordered the specific commodity to check to see that delivery was to be made. If it was, then we would get the quality and the number of cases from him also on a cross check. Then we would go immediately to the plant to make the inspection.

Q. You testified that Mr. Moncharsh called you on occasion—do you know this gentleman's first name? A. No, I do not.

Q. Can you point him out in this courtroom?

Mr. Faulkner: Will you stand up, Mr. Moncharsh?

The Witness: He is sitting over by Mr. Smith. That is Mr. Moncharsh?

Mr. Houck: May the record show——

Mr. Faulkner: There is no question about it.

Mr. Houck: Q. Now, you say you came to the plant. Let me preface that by this: What type of purchases would you inspect at the Nye & Nissen plant?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. Purchases usually for posts, camps and stations in this area.

Q. Purchases by whom?

A. By the Army.

Q. Again this would fall within your duties of inspecting for [222] the Army?

A. That is right, yes.

Q. Now, you are at the plant after having received this call. Who would you meet when you came in?

A. Usually we were met at the dock by Mr. Goddard.

Q. And what would he do?

A He would take us back to where the delivery of eggs was stacked on the floor on racks.

Q. And what type of information, if any, would he give you?

A. He would indicate that here was the 100 cases of eggs for delivery, we will say, to the post at the Presidio. They were Grade A quality, and they were to be delivered by three o'clock that afternoon.

Q. Incidentally, would you ordinarily come alone, or would you have other men with you?

A. I would usually have a driver, who was also a meat and food inspector, and an enlisted man to help in the inspection.

Q. What would you do once these eggs had been identified?

A. We always selected 5 percent of the eggs for inspection.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Your Honor, I do not know what the theory of the Government is. If I knew I might not object. But there is a specific charge. The defendants here are not to answer a general charge as to the conduct of their business. This is not within the issues framed in the indictment. We are here to meet a criminal charge with specifications.

Mr. Houck: The purpose of this testimony, your Honor, is to establish what type of inspection the Army conducted. The [223] gist of the conspiracy charge is that this inspection was defeated by various means, and we are showing here what the inspection consisted of.

Mr. Faulkner: Well, it would only be binding on the men who saw and observed the inspection. It would be hearsay. It is interesting, but after all this is a criminal case. [223-a]

Mr. Faulkner: We object to the materiality of it unless it relates to a particular offense, a particular count in the indictment.

Mr. Houck: Well, your Honor, of course it relates generally to all the counts in the indictment.

The Court: Well, it is limited thus far in the testimony to the three defendants named.

Mr. Faulkner: One of them is not a defendant.

The Court: What?

Mr. Faulkner: Mr. Jack Smith is not a defendant. He is one of the persons mentioned.

The Court: Who?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Mr. Jack Smith, the Vice-President of Nye & Nissen. He is not an indicted defendant. Limited to Mr. Moncharsh and Mr. Goddard.

The Court: Yes.

Mr. Faulkner: Very well.

Mr. Houck: Q. You have got to the point where eggs, let us say, have been pointed out to you as about to be delivered. Then what did you do?

A. We would take a white chalk and mark five per cent of the cases, taken five cases in each 100 cases of eggs.

Q. How would you choose those cases you marked?

A. They would be picked at random throughout the stack of cases from the top, the middle and the bottom and the sides, so we would get a [224] representative sample of a lot.

Q. What would be done, if anything, with these cases you marked?

A. Then Mr. Goddard would go through the stack of egg cases and take out those cases we would mark with a white chalk, with an "X" on the case.

Q. What would he do with them?

A. He would place them on a flat and take them back in front of the candling booth in back of the plant.

Q. Tell us what a flat is?

A. A flat is just merely a platform of boards.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

It is raised off the floor so you could run a sort of truck under it and raise it off the floor and push it around through the plant.

Q. Just a means of conveying——

A. A means of conveying without carrying it.

Q. I don't believe I ascertained just which plant this was of the defendant company.

A. This was the old plant of Nye & Nissen on Townsend Street.

Q. We got the eggs over near the candling booth. What next would occur?

A. Either Mr. Menges or Mr. Goddard would take the tops off the cases and I would go inside the candling booth and they would push them under the curtain inside.

Q. Describe the candling booth.

A. It was a dark room, I would say approximately 25 x 60 feet. On the west wall there would be about approximately ten candling lights with ladies there candling eggs. They would ask one of the ladies [225] to take a spell out, I think it was called, while I used her light to candle the eggs.

Q. Did you go in this candling room?

A. Yes.

Q. What would the driver, or whoever was with you, do?

A. He would usually go inside and help me with the candling.

Q. Now, you are in this room. How would the eggs be supplied to you?

A. The eggs would be open, the case would be

(Testimony of Lt.-Col. Pearl Hugh Hand.)

open and be pushed into the room through an opening in the west wall near the light. When I was through candling them I would push them out and they would push in another case.

Q. Do I understand only one case was in the candling room at one time? A. Correct.

Q. There was only one case, and you were examining it? A. Correct.

Q. How did they push it in, what sort of an aperture did it go through?

A. An opening in the wall.

Q. Can you describe the dimensions of that opening?

A. Large enough for a case to go through; I would say about three or four feet, with a curtain.

Q. The curtain covering it? A. Yes.

Q. The eggs would be pushed through the aperture to you. What would you do with the case?

A. I would start candling—I would lift the filler, examine physically the outside shell on the first 36 eggs, the top filler. Then I would start candling, flashing them before the light. [226]

Q. You would examine the top filler for what purpose?

A. To detect any stains, soiled eggs, broken eggs, moldy eggs.

Q. We have been told there are 36 dozen in a case.

Mr. Faulkner: 30.

Mr. Houck: 30. What eggs would you choose to candle of that 30 dozen?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. We would take the top filler, the middle and the lower fillers. There are five in each one-half case. The next time we would start with the third, fourth and fifth fillers. Then we would get a representative sample throughout the case.

Q. You could lift each filler out and use it, or not, as you chose? A. Yes.

Q. Can you tell us what the mechanics of candling was, as far as you and your inspectors were concerned?

A. We would take two eggs in each hand and pass them individually before the candle. Then we would put them in their respective fillers and take two more. We would candle 100 eggs out of each case.

Q. Out of each case of eggs. How long would it take you to candle four eggs, the four eggs you had in your hand?

A. Depending on the quality.

Q. Grade A.

A. How long would it take to candle four eggs?

Q. Yes.

A. Oh, I would say fifteen seconds.

Q. You candled them for quality, is that correct? A. Yes. [227]

Q. Would you subject any of these eggs to a weight test?

A. If these are any eggs that appeared to be underweight we would put them on a scale and check the weight.

Q. What sort of scale, an individual egg scale?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. On an individual egg scale.

Q. If your observation indicated to you the eggs were not out of line, do I understand then there would be no weight check?

A. There was not any weight check then.

Q. Let us suppose you candled 100 eggs out of a sample case.

Mr. Faulkner: I object to the form of that question. The defendants are not charged with supposition.

Mr. Houck: I will reframe it, your Honor.

Q. What did you do with a case of eggs when you finished candling it?

A. After the case was completely candled then we would check the various separations of the eggs in a quality basis and make a report of the number of eggs falling in each grade. Then we would put the eggs back in the case and push the case out of the room and receive another case.

Q. Would you push it out through the same aperture? A. Yes.

Q. While your were in this room could you see the person who was pushing the cases of eggs through the aperture to you?

Mr. Faulkner: To which we will object as incompetent, irrelevant, and immaterial, and not binding upon the defendants, whether he could see some undisclosed person, unidentified with this case. [228]

Mr. Houck: I think it is quite important, your Honor, that this witness be allowed to testify that while he was in the room some employee of the com-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

pany pushed the eggs through the aperture to him, he didn't know what it was, nor——

The Court: That foundation has been laid.

Mr. Houck: At any rate, you were supplied with the eggs by an employee of the company, I think you testified.

The Witness: A. Yes.

Mr. Faulkner: No, he did not testify to that. The record is as clear as could be. He said his inspector or himself went to the eggs and he marked them with a crayon and they merely did the physical work of delivering them to that room, so the very act of the supplying of those eggs was done by the Colonel. That is very clearly testified to. They didn't supply those eggs to him. He selected the eggs himself.

Mr. Pratt: If your Honor please, I have been listening to this testimony, and it is my very definite recollection that the witness stated that he marked these cases that were to be examined and then he and his driver went into the booth. Obviously, somebody passed these eggs on to him and it seems entirely relevant to find out who did.

Mr. Faulkner: Who passed them? Your associate said who supplied the eggs for your inspection. The very act of supplying them, the designation of the boxes of eggs was done by the Colonel. The physical work of getting them to the [229] booth was done by the employees. I object to the use of the words "Who supplied the eggs?"

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Houck: I will be glad to withdraw the word "supply."

Q. While you were in the booth with your associate inspector, how did you get the eggs?

A. Usually they were passed through the opening by Mr. Menges.

Q. A defendant in this case sitting in this courtroom? A. Correct.

Q. Did any of the other defendants in this case pass these eggs to you through the aperture?

A. Not to my knowledge.

Q. When Mr. Menges passed you these cases of eggs, could you see the cases he selected to pass to you? A. No, I could not.

Q. After you inspected the first case you went ahead and finished inspecting the 5 per cent sample?

A. Yes.

Q. What would be done then?

A. If the five cases met the grade purchased, then we would go outside and place an Army stamp on them.

Q. On these five cases, 5 percent cases?

A. Usually they would put on the proper label, which would be done by either Mr. Goddard or Mr. Menges, and then we would stamp that amount.

Q. By label, what do you mean?

A. The company's trade label, the paper label was placed on the case of eggs.

Q. Do you recall what type of label that was, the color, the words on it, now?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. I recall the defendant's name was on it, the address. [230]

Q. The Nye & Nissen plant?

A. I don't recall the color.

Q. Then you stamped these five sample cases, and then would the other cases in the lot be stamped?

A. The five samples would be taken and stacked back with the original lot and we would stamp all the cases.

Q. When you say "we," just whom do you mean?

A. Either myself or the driver, who was there with me.

Q. Would you ever ask or allow the company employees to do the stamping for you?

A. No.

Q. Did you ever allow an employee to have custody of your stamp?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial.

The Court: It may and may not become material. I am not prepared to say. I will allow it.

Mr. Faulkner: You can ask him if he didn't do a number of things. It is what was affirmatively done.

The Court: Read the question.

(Question read.)

Mr. Faulkner: That is a negative. In other words, he may never have allowed them to do a thousand things.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: Very well. The stamp is in question here, I take it.

Mr. Faulkner: I think the affirmative is the proof——

The Court: Well, what did you do in relation to the stamp? [231]

A. I kept the stamp in my possession at all times.

Mr. Faulkner: That is it.

Mr. Houck: Q. In your presence did your inspectors working under you do that at all times?

A. As far as I know they did.

Q. Do you have your stamp, or a similar one, with you at the present time?

A. Yes: I have a copy of that stamp here. My name was on the particular stamp I used.

Mr. Houck: May this sheet be marked as Government's Exhibit for Identification?

(The document was marked U. S. Exhibit 34 For Identification.)

Mr. Houck: Q. Colonel, will you describe what this is?

A. This is a horseshoe-shaped stamp bearing the words in the horseshoe——

Q. Don't tell us what is on it, just tell us what it is.

A. It is an Army veterinary corps inspection stamp.

Q. Is it the type of stamp that you stamped on these cases which you inspected and approved?

A. Yes.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Houck: I offer Government's Exhibit 34 For Identification in evidence.

Mr. Faulkner: May I ask the Colonel a question about the stamp?

The Court: Yes.

Mr. Faulkner: The ordinary VC stamp or U. S. Army stamp, does it have a name down below——

A. At that time they did have. It was a regulation put out by the Ninth Service Command [232] Veterinary.

Q. I have seen hundreds of these cases and they have this over it, but this the first I have seen with a name.

A. In this area it was used.

Q. When was this stamp used?

A. The last time was 1/8/44.

Q. No, I don't mean that. I mean when was the practice of using the name of the individual, like here, it says, "M. R. Evans, Captain, V. C." Up to what time were stamps like that used?

A. I would say around in this area it was discontinued approximately the middle of August, 1944.

Q. It was discontinued?

A. To the best of my recollection. I was not here at the time.

Q. In 1941, on this specific occasion which we are talking about—— A. Was not used.

Q. What? A. It was not used.

Q. In this individual instance it would contain your name? A. Correct.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: We have no objection to the stamp.

The Court: Admitted and marked.

(U. S. Exhibit 34 for identification, was thereupon received in evidence.)

Mr. Houck: Q. It was brought out then that that stamp contained the name of the inspector, is that correct? A. That is correct.

Q. Do you know who Captain Evans is, whose name appears on [233] that particular stamp?

A. Yes, I do.

Q. Who is he?

A. He is Captain Milton R. Evans. At the time the stamp was made he was my detachment commander at the Presidio of San Francisco.

Mr. Houck: May I show this facsimile of the stamp to the jury, your Honor?

The Court: Yes.

Mr. Houck: Q. After stamping this lot of cases of eggs, Colonel, what type of form, if any, would you fill out?

A. We would fill out an inspection sheet showing the quality of eggs, the number of eggs.

Mr. Faulkner: The contents of the sheet, your Honor—the sheet is the best evidence. We object to it because——

Mr. Houck: There will later, your Honor, be numerous of these sheets put in. At this time I am merely trying to establish the procedure for Army inspections.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Oh, no. You have established an inspection in which Mr. Goddard and Mr. Mondiash participated, and it was so limited in the record, and, as I understand, the Court ruled and limited it to those individuals.

The Court: There is another defendant mentioned since.

Mr. Houck: Defendant Menges.

Mr. Faulkner: Yes, later, your Honor.

Mr. Houck: I will limit the question, Colonel—I think probably you have already answered it, you did make [234] such a report?

A. Such a report was rendered.

Q. Without telling us what it was, can you tell us who received copies of the report?

A. A copy was filed in the station file at the Presidio at San Francisco, and a copy was sent to the sales officer who made the purchase.

Q. Were these eggs ever inspected again by you?

A. Yes, again.

Q. When?

A. When they were delivered to the Presidio.

Q. Suppose the destination had not been the Presidio, but was a dock for overseas shipment——

Mr. Faulkner: We object to the supposition. This is a particular quantity of eggs that were inspected in Nye & Nissen's plant and now they have been sent to the Presidio for inspection. They cannot go both places.

Mr. Houck: Well; I will continue on with this one, then.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. These eggs that came out to the Presidio, how would they arrive there?

A. They would be brought out by Nye & Nissen's truck.

Q. What would happen when the driver drove in with the eggs?

Mr. Faulkner: We object to that, your Honor, the form of the question. What did happen, not what would happen? You are bound by these transactions.

Mr. Houck: What did in this case happen?

A. The truck would back up to the dock the unloading dock at the commissary. We would select again five ~~samples~~ of the number of cases in the lot, 5 percent of the samples. [235]

Q. Was this before or after the truck was unloaded?

A. It was before the truck was unloaded.

Q. How did you select these samples?

A. They were selected at random throug'out the truck.

Q. What was done with them?

A. They were taken into the candling booth in the field commissary and again 100 eggs in each case were candled.

Q. The same procedure you have outlined before?

A. Yes.

Mr. Faulkner: We object—it could not possibly be the same procedure outlined before where it was in the Nye & Nissen plant. At that place the eggs would be marked with a crayon. They would be

(Testimony of Lt.-Col. Pearl Hugh Hand.)

carried over and opened by people in the employ of Nye & Nissen. The people at Nye & Nissen could not have any connection with the second inspection, but we get in this record that the same thing was done as before. I object to the form of that question and ask the evidence be stricken out, because I am sure the witness did not intend to convey that impression.

Mr. Houck: I will withdraw that particular question, your Honor.

Q. Were the mechanics of the grading, as far as the number of eggs graded, the grades in question, the amount of time it took to grade the particular eggs, and that type of thing?

Mr. Faulkner: We will object to that. I have no objection if he asks the Colonel what he did out there in connection with the inspection. [236]

Mr. Houck: All right.

Q. How did you grade these eggs at the Presidio?

A. We took white chalk and went on the truck and marked 5 percent of the cases. The cases were then taken inside.

Q. By whom?

A. Usually by an enlisted man in the Army.

Q. An Army representative?

A. They were taken inside to the candling booth, opened up by the Army enlisted man and we candled the eggs the same as they were candled at the plant.

Q. Then what was done?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. If the eggs—the sample we took off the truck were acceptable we accepted the lot of eggs. Then they were taken off the truck and placed in the field commissary.

Q. What is the field commissary?

A. A field commissary at a post is where all rations for troops are stored, from vanilla to onions and on down the line. Then at a field commissary each company mess throughout that area comes in for the rations. They may start at six o'clock in the morning and get their last rations about four the next morning. If they are anti-aircraft groups stationed down the peninsula they come in at all hours of the night, depending on the type. They are all allotted a time to draw their rations.

Mr. Houck: Will your Honor indulge me a moment?

The Court: We will excuse the jury and take a recess for a few moments.

(Recess.) [237]

The Court: Waive the roll call, stipulated all the jurors are in the box. Proceed.

Mr. Houck: Q. Colonel Hand, you have related a specific instance in which you inspected eggs delivered by the defendant Nye & Nissen to the Presidio under an Army purchase. Can you state whether or not there were other such instances during your service at the Presidio?

A. There were numerous other occasions.

Q. You have told us that you inspected at Nye

(Testimony of Lt.-Col. Pearl Hugh Hand.)

& Nissen, I think you said, twice a week on the average? A. Approximately.

Q. Can you tell us about how many of those orders included deliveries to the Presidio?

A. All of them either went to the Presidio or the surrounding area.

Q. I am limiting this to the Presidio. If you can't, say so, and we will go on.

A. I do not remember.

Q. Incidentally, did you inspect all such deliveries to the Presidio during the period that you were in office there?

A. Not personally, no.

Q. You or the men under your supervision?

A. That is correct.

Q. As I understand it, your office has charge of all inspection for the Army of deliveries such as this? A. That is correct.

Q. In these other instances did the procedure vary from that which you outlined to us as happening in this particular instance?

A. Yes, it did. On occasion the truck driver——

Mr. Faulkner: The question—— [238]

Mr. Houck: How did it vary?

Mr. Faulkner: We will object to that as incompetent, irrelevant and material and merely testimony relating to a subject matter that is not affected by any count in this charge. In other words, we are here in court to answer the specific charge, whatever it may be.

Mr. Houck: Of course, that is what counsel is

(Testimony of Lt.-Col. Pearl Hugh Hand.)

trying to confine his testimony to, your Honor. This is an involved conspiracy indictment that covers a long period of time, and it covers a course of procedure which we have charged the defendants entered into. What I would like to prove by this witness is not that on one occasion but maybe on a hundred occasions he did thus and so. I want him to set forth the course of procedure which he followed. That will save considerable time for both this Court and the Jury, and I do not see why we should have to take every single delivery he inspected for the Presidio. It is sufficient if we show the type of procedure which was followed, and that will give the general picture without taking a considerable amount of time.

Mr. Faulkner: Our position is this: I think counsel on both sides know that during the period of time that this witness was connected with the Veterinary Corps and had some business with Nye & Nissen that millions, literally millions of eggs were delivered to the Army. Here is a conspiracy charge, six separate counts, all relating to deliveries to boats, and a general [239] conspiracy count relating to—is this the indictment?—relating to conspiracy by grading, weighing, packing, selling and delivering to the United States of America certain eggs. Now, it is true that the language of the conspiracy is general, but the proof of the conspiracy must be specific. In other words, for a defendant to come into court with an eight year period in his business life to defend against, and then have an

(Testimony of Lt.-Col. Pearl Hugh Hand.)

effort made to establish it by mere generalities, we submit that this evidence is not material. If there was an occasion when there was a grading that was illegal, the use of a stamp that was illegal, the use of a method of delivery that was illegal, that would be admissible. But generalities relating to how a business was conducted, we respectfully submit, is not proof, and we object to it on the ground that it is incompetent, irrelevant and immaterial, calling for the opinion and conclusion of the witness, and is not binding upon these defendants.

Mr. Houck: My reply to that, your Honor, is, of course, we have to start some time in every conspiracy trial. I am perfectly willing that this evidence be limited to the conspiracy count and to the conspirators who have been named by the Colonel. I think, however, it would be unfair to the Government to have to limit this person's testimony to certain specific instances and force the Government later to tie into those specific instances the other testimony of the company employees whom we will bring on later. [240]

Mr. Faulkner: That is just the point of my objection, your Honor. In other words, their hope is to build a series of generalities here, the background of how a business is conducted, and then have someone come into court and say something with respect to an incident which this man, whom no one could criticize, or have any objection to his honor, integrity, or anything else has testified to

(Testimony of Lt.-Col. Pearl Hugh Hand.)

generally. In other words, if some witness is going to testify about an incident that the Colonel is asked to testify respecting, we should have that incident defined by the Court so the Jury can follow the testimony. In other words, we would take the very strong position before your Honor that generalities coming from witnesses which are not subject to impeachment in any way is not the method of proving a conspiracy by taking some specific incident that this witness has never tied himself into as being a part or parcel of.

Mr. Houck: I can, of course, go over with the Colonel every instance on which he inspected eggs for the Presidio. I do not want to do that. It may take three or four days.

Mr. Faulkner: They have five overt acts, your Honor. They have six substantive offenses. The Court has nothing to do with any of the substantive offenses. They have five overt acts. Three of them relate to deliveries on ships. So there are two overt acts that might possibly relate to the Army, and if they are going to prove those acts and tie the Colonel's testimony [241] in, we should know it now, and I think it would be unfair for five defendants, four men and a corporation, to have to go to trial and meet a charge under this indictment with general testimony that is not tied into the charge laid in the indictment.

The Court: He has indicated he is offering this testimony on the conspiracy count and three of the defendants have already been named.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Yes, but he makes no claim that there is anything wrong with these things the Colonel is testifying to. He makes no claim there is any criminality involved. He makes no claims there was an violation involved.

Mr. Houck: That is correct, your Honor. All I am trying to do is to set forth what inspection the Colonel and his inspectors made when they went to the company plant. I do not see why I should have to do it over and over again to establish what happened on the specific occasions which this Colonel can perhaps not remember, but our subsequent testimony will be tied into.

The Court: Let me handle this. Read the question.

(The last question was read by the reporter.)

Mr. Faulkner: Before your Honor rules, may I call attention to the last statement by Mr. Houck? In other words, his purpose, as now indicated to the Court, is to later bring a witness in who will testify to some incident or occurrence [242] relating to any army delivery, and then he will assume that what the Colonel testified to occurred at a prior time, without any evidence that that had occurred in connection with that incident, and I submit that that is not admissible; it is hearsay and it is incompetent, irrelevant and immaterial.

Mr. Houck: Of course, your Honor, that is typical of the evidence in this type of conspiracy. We will have witnesses later on to testify what happened from the standpoint of certain company

(Testimony of Lt.-Col. Pearl Hugh Hand.)

employees on certain specific days, naming them, and naming purchase orders. What we want to get in evidence now is the method of inspection followed by the Colonel and his inspectors. I could easily bring it out by going over every occasion on which the Colonel and his inspectors inspected at the Nye & Nissen plant, but that would be a tremendous waste of time. I really see no need for it.

Mr. Faulkner: Waste of time, your Honor, can be no excuse for the departure from an orderly procedure. If they have some evidence from some other witnesses that something happened at a particular time and a particular place, pick out the incident and let the Colonel testify to it. We know under the rules of evidence that that is proper. But to have a general statement in this record which a jury would assume has been followed from day to day, instant to instant, we would submit that is not a proper way to prove a conspiracy under the rules of evidence and under the authorities in this circuit. It is too [243] general. It is too important to the defendants.

Mr. Pratt: I would like to direct the Court's attention in the first place to the statute. It provides that if two or more persons conspire to commit an offense against the United States or to defraud the United States they shall be guilty if an overt act is committed. Now, there is a vast difference between a conspiracy to commit an offense against the United States and a conspiracy to defraud the United States. In the case of a conspiracy to commit an offense the specific offense must

(Testimony of Lt.-Col. Pearl Hugh Hand.)

be proven. But the charge here is a conspiracy to defraud the United States, and the particular specifications of the manner in which the fraud was conspired to be committed is set out in three specifications, A, B and C. It will be noted by reading those clauses that the charge against these defendants is not to commit an offense against the United States, but to defraud the United States in the manner alleged, namely, in connection with the grading, weighing, packing, selling and delivering eggs and products to the United States, War Shipping Administration, inferior products, through frauds and deceptions practiced upon the inspectors, graders and representatives of the United States Department of Agriculture, and so forth. Further, by impeding, impairing, obstructing and defeating the lawful intentions of the United States Department of Agriculture, the War Department and the Navy Department in connection with inspecting, grading, weighing and the purchase of butter, cheese, [244] and eggs. And again by circumventing and avoiding the standards, grades, weights and specifications to which purchases are subject by means of false and fictitious inspection, grading, and weighing and by the prevention of honest and accurate inspection, grading and weighing by said representatives.

If the Court please, in the proof of a conspiracy of this character it certainly is incumbent upon the Government to prove a course of conduct existing over a period described in the indictment, which

(Testimony of Lt.-Col. Pearl Hugh Hand.)

in this case is from 1938 to 1945. Now, in order to prove a course of conduct I think we are entitled to show not only specific instances but a general course of conduct, a general course of procedure that obtained during this period, and this witness, we believe, is entitled to show not only the specific instances but to state in general the course of conduct which he pursued in connection with his employment and his official duties.

The Court: The objection here, if I followed it, goes to the questions answered because they are too general. They are not specific.

Mr. Pratt: I think we are entitled, if the Court, please, to have testimony of a general character which applies——

The Court: That general character permits of a wide latitude.

Mr. Pratt: I think there should be a wide latitude.

The Court: There should be a wide latitude, but he is [245] entitled to whatever conduct is engaged in, fixing the time and the parties present, just as he would in any other proof that he would offer so that he would be in a position to meet it.

Mr. Pratt: Of course, the proof must be of a character that the defendants may have an opportunity to meet.

The Court: That is what I had in mind.

Mr. Pratt: This witness has connected with these transactions two or three of the individual defendants and certainly has connected with the trans-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

actions the corporate defendant, and we believe a wide latitude, if your Honor agrees——

The Court: I have indicated that, but it must not be so general that they won't have an opportunity to meet it.

Mr. Pratt: A course of conduct——

The Court: The test is on cross examination.

Mr. Pratt: Very well, but a course of conduct can be proven certainly by the Government and a course of conduct can be negatived by the defense. It certainly is not necessary that in each instance there be a specific transaction described by dates and times.

The Court: No, I am satisfied that this witness called here on the stand can as a preliminary matter outline the general method, generally the procedure taken. However, that does not permit of the defense an opportunity to meet whatever testimony he has, the parties present and the actors to that transaction. That is all I have in mind. If I am in error I will [246] stand corrected.

Mr. Houck: I think I can qualify the questions to satisfy your Honor.

The Court: Proceed, gentlemen.

Mr. Houck: Q. Colonel Hand, you testified to an occasion in which Mr. Goddard, one of the defendants, called you to the Nye & Nisser plant and then you went through the procedure that you have told us about. I will ask you if there were other occasions on which Mr. Goddard called you to the

(Testimony of Lt.-Col. Pearl Hugh Hand.)

plant and pointed out the eggs to you and you made inspections?

A. Numerous other occasions.

Q. And on those occasions did you follow the procedure which you have outlined in this first instance? A. Yes.

Mr. Faulkner: Same objection.

The Court: I will allow it. It is a preliminary question.

A. Yes, I did.

Mr. Houck: Q. You testified, I think, that A. Abraham Moncharsh or, rather, the defendant Moncharsh in this case, called you on at least one occasion, is that correct? A. Yes, he did.

Q. Where there other occasions on which the defendant Moncharsh called you to come to the plant and make an inspection?

A. A few. I do not recall just how many.

Q. Your testimony is he called you in a few times and on each of those few times did your procedure in making that inspection [247] follow that which you have already described? A. Yes.

Q. Did any of the other defendants ever have occasion to call you to the plant to make an inspection? A. Not to my recollection.

Q. Then all of the times which you made an inspection of the plant it was either the defendant Goddard or Moncharsh that called you to the plant and pointed the eggs out to you, is that correct?

A. That is correct.

Q. Now, let me take you on from the point at

(Testimony of Lt.-Col. Pearl Hugh Hand.)

which this inspection has been made at destination, in other words, at the Presidio. The truck driver has delivered the eggs to the Presidio and you have made a second inspection there. Were there any occasions on which you inspected those eggs for a third time?

Mr. Faulkner: If your Honor please, we object to this type——

The Court: You may answer yes or no.

The Witness: Yes.

Mr. Faulkner: Just a moment. Counsel has just elicited a procedure that was followed on one occasion. He is then asking if the same identical procedure was followed on other occasions, and the witness answered yes. Now he asks if something different did not happen.

Mr. Houck: No.

The Court: Wait, he has not gone that far.

Mr. Faulkner: He has already elicited—— [248]

The Court: I limited it. He answered "Yes".

Mr. Faulkner: No, your Honor, what I am driving at is this: The Colonel has testified to the procedure on a particular occasion. Then counsel for the Government says, "On other occasions did Mr. Goddard phone you?" "Yes".

"At that time was the same procedure that you outlined followed?" "Yes".

Then Mr. Moncharsh phoned him. "Was the same procedure followed"? "Yes". Now he is trying to prove a different procedure was followed on those occasions.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Houck: No, your Honor, I think counsel is in error.

Mr. Faulkner: I will submit the question as propounded.

The Court: Gentlemen, the Court has ruled. You may now proceed.

Mr. Faulkner: Exception.

The Court: Read the question.

(The question and answer were read by the reporter.)

Mr. Houck: Q. Do you recall a specific occasion on which you inspected such eggs for a third time?

A. Yes, in the early fall of 1941 I received a call——

Q. Don't tell us what you received. The occasion occurred in the early fall of 1941?

A. Yes.

Q. What did you do? Where did you make the inspection?

A. At the headquarters mess, Post Presidio San Francisco.

Q. Do you recall what time of the day it was?

A. Approximately [249] six o'clock in the morning.

Q. You went, I assume, to this mes, headquarters mess? A. That is correct.

Q. What did you find there?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial and hearsay as to the defendants. These are eggs that have been inspected at the plant and inspected at the point of

(Testimony of Lt.-Col. Pearl Hugh Hand.)

delivery, and no defendant is present on this third inspection.

Mr. Houck: We have established that the eggs did come from the defendant's plant, your Honor, under this procedure that has been described, and he has testified what his inspection on each of these other two times was. I am now asking what his inspection the third time showed.

Mr. Faulkner: We object to that as hearsay and not binding on the defendants. The eggs then are the eggs of the Army. They are in their possession and control.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Houck: Q. What did you find at this headquarters mess?

A. I found inedible eggs in a frying pan.

Mr. Faulkner: That is just the point, your Honor. That is incompetent, irrelevant and immaterial and not an issue in this case. He could have found thousands of inedible eggs. We are not here charged with inedible eggs. [250]

The Court: What kind of eggs were found in this pan?

A. They were eggs taken from a case bearing Nye & Nissen's label. They had my inspection stamp on the label.

The Court: Proceed, gentlemen.

Mr. Faulkner: Exception.

Mr. Houck: Q. You say they bore your inspection stamp. How do you know it was yours?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. It had my name on it.

Q. Did it have a date on it?

A. It was dated also, two days before.

Q. Two days prior to this third inspection you are making. Incidentally, let me ask you what happens to eggs when they come into the field commissary? What type of care is taken of them?

A. They are placed in a refrigerated room under refrigeration.

Q. Is this true of all eggs which come into the field commissary? A. That is correct.

Q. What would be the occasion for a cook or a mess sergeant or whatever you call him——

Mr. Faulkner: We object to that as hearsay as to the defendants, and I would like to address myself to the Court on the question of inedible eggs. Your Honor has seen from the testimony of the Colonel and from the witness from the Department of Agriculture that a quantity of eggs is submitted to the Army, the Colonel who is the witness on the stand—say 500 cases. He takes 5 per cent of them. That would be 25 cases. [251] And he grades them. That would then leave 475 cases of eggs, and if there are inedible eggs in there it is not the fault of Nye & Nissen.

The Court: That goes to the weight of the testimony.

Mr. Faulkner: Under the law or under the regulations——

The Court: That testimony goes to the jury and

(Testimony of Lt.-Col. Pearl Hugh Hand.)

they may weigh the testimony. I think that is the test under the law.

Mr. Faulkner: But the charge that this is being offered under, your Honor, is the defrauding of the Government, not in respect to the eggs, but in respect to their sale and their stamps, and your Honor can readily recognize——

Mr. Houck: That is incorrect, your Honor.

Mr. Faulkner: Your Honor will recognize that when you are dealing with eggs or a commodity that is perishable like that——

The Court: We were discussing what a fresh egg was.

Mr. Faulkner: Yes, I know, and when you try talking about a bad egg, it kind of affects your stomach, and it is to our prejudice when they start talking about inedible eggs when they are not attempting to prove that charge. It does not enter into this case.

The Court: It goes to the weight of the testimony.

Mr. Faulkner: But it is a different subject. It is the matter of the use of those stamps and the grading.

The Court: It is the eggs that were delivered by Nye & Nissen. [252]

Mr. Faulkner: No, they have no such charge.

The Court: Q. These eggs in question, are they the ones that you said were delivered by Nye & Nissen?

A. That is correct.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: There is no charge of that nature that this testimony is admissible under. The specific charge in respect to those are the substantive counts. They are all deliveries to ships. There is no specific charge in respect to the delivery of those eggs to the Army. The conspiracy is to defraud the Government by doing something to their grading and their stamping devices.

The Court: Is it limited to that?

Mr. Faulkner: I think so. They are not even charged with presenting a false claim.

The Court: Let us read the indictment.

Mr. Hippeli: Could I read you parts of the indictment, your Honor, that may be of assistance to you? Mr. Pratt referred to certain charges of the indictment. They are charged with conspiring to defraud the United States by "impeding, impairing, obstructing and defeating the lawful functions of the United States Department of Agriculture, War Department, and Navy Department in the inspection, grading, weighing and purchase of butter, cheese and eggs.

"By circumventing and avoiding the standards, grades, weights and specifications to which the said purchases are [253] subject by means of false and fictitious inspection, grading and weighing; by the prevention of honest and accurate inspection, grading and weighing by said representatives; and by other tricks, schemes, devices, and concealments in the manner and by the means hereinafter set forth."

It is further alleged that it was part of the plan of conspiracy that the "defendants and said co-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

conspirators would secretly and without authorization place stamps, falsely indicating inspection and grading by inspectors and graders of the United States Department of Agriculture and War Department, upon cases of eggs which had not been officially inspected or graded."

If these cases were rotten and they bore the Colonel's stamp on them, I believe it is material under that particular charge.

Further, "Defendants and said co-conspirators would prepare sample cases of eggs which were of a higher grade than the lot to be inspected and graded, and submit the sample cases to said inspectors and graders instead of the cases designated by the inspectors and graders. Many of such lots of eggs were delivered to the United States of America—War Shipping Administration and War Department."

Here we are specifically referring to delivery to the War Department. I could go on to the overt acts, if your Honor please.

Mr. Faulkner: That is exactly what I am driving at. Every [254] one of those designations relates to circumventing the Government in the matter of grading and inspecting eggs, and now they come in after the eggs have been inspected and graded. If we have done anything wrong in the grading and inspection of eggs, we have committed an offense and the Jury will so find, but they can't prove that by putting a bad taste in the mouths of the jurors of inedible eggs, unless that evidence ties in with the transactions with which we are charged, in

(Testimony of Lt.-Col. Pearl Hugh Hand.)

which we did one of the things charged and which Mr. Hippeli read, and their inspection after the Army had possession of the eggs under the procedure they are bound by is not evidence that anything was done about the inspection.

The Court: Read the question, Mr. Reporter.

(The question was read.) [255]

The Court: I will sustain the objection at this time.

Mr. Houck: Q. You had stated the eggs would be placed in an icebox or refrigerator.

A. Yes.

Q. When would they be taken out of that refrigerator?

Mr. Faulkner: The same objection.

The Court: Overruled.

Mr. Faulkner: Exception.

A. They would be taken out on the morning they were to be served in the mess.

Mr. Houck: Q. By whom would they be taken out? A. By the mess sergeant.

Q. Where would he put them?

A. He would place them——

Mr. Faulkner: The same objection. What the mess sergeant does with the eggs is hearsay as to these defendants.

The Court: Overruled. I will allow it as a preliminary question.

Mr. Faulkner: Exception.

The Witness: Mess sergeants would serve them that morning for breakfast.

Mr. Houck: Q. Well, he would take them from the refrigerator and put them where?

A. Wherever they were to be cooked.

Q. Where was it you saw these eggs that you are now inspecting for the third time?

Mr. Faulkner: Same objection.

The Witness: In the kitchen at headquarters mess. [256]

Mr. Faulkner: Excuse me. Same objection. This is supposed to be a particular case of eggs in 1941. Unless it is tied in with the defendants in the indictment, we object as hearsay and not within the issues.

The Court: I will allow it.

Mr. Faulkner: Exception.

Mr. Houck: Q. On this particular occasion, how many eggs or cases of eggs did you see there?

A. Three.

Q. You testified they all bore your stamp?

A. Yes.

Q. Within two days previous? A. Yes.

Q. Were there any eggs outside the eggs—the case?

A. Yes, there were approximately 15 in a large pan on the stove.

Q. Did you inspect those eggs in this large pan?

A. Yes.

Q. What were the results of your inspection?

Mr. Faulkner: The same objection, not binding upon the defendants.

The Court: Overruled.

Mr. Faulkner: Exception.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. Three of them had a very offensive odor.

Mr. Houck: Q. What do you mean by that?

A. They were dark rots, they were rotten.

Q. What did they look like?

A. The white was watery and had run all over the pan and permeated the other eggs in the pan.

Q. You say they were black rots and white rots? A. Yes.

Q. Is that a type of condition which shows up on inspection? A. Yes, it is.

Q. Did you inspect those three cases of eggs again on this occasion? A. Yes.

Q. What were the results of that inspection?

A. Approximately 10 per cent of the eggs in the entire case were inedible.

Q. Again, just what do you mean by "inedible"?

A. They were either black rots, white rots, blood rots, stuck yolks.

Q. And what type of inspection did you put them through on that occasion?

A. 100 per cent inspection. We looked at every egg in the case.

Q. And by looking at it, you mean candling?

A. We candled it; took out the inedible eggs—they were then Government property.

Q. And did these black rots and so forth show up on candling?

A. They did, very definitely.

Q. Do you recall any further occasion upon which you inspected eggs for a third time that came from the defendant company?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. I again saw eggs at Letterman General Hospital, in the bakeshop there, where they make their pastries for the patients.

Q. What time of year, or month, was it? Can you fix the time?

A. It was in the fall of 1941.

Q. What is Letterman General Hospital?

A. Letterman General Hospital is a general hospital connected with the War Department, Surgeon General's office.

Q. Where is it located?

A. The Presidio, San Francisco. [258]

Q. What time was it that you made this inspection?

A. Approximately nine o'clock in the morning.

Q. Where was it again, did you say?

A. In the Pastry Shop, where they bake pies and cakes.

Q. When you came into the Pastry Shop about nine o'clock in the morning what did you see?

Mr. Faulkner: Same objection, and the further objection that it has not been connected up with the defendants in this case, the instance the Colonel has just testified to.

The Court: It will be a matter for the jury. Overruled.

Mr. Faulkner: There has been no defendant——

The Court: Unless it is further connected up, it will go out.

Mr. Faulkner: Very well. Is it subject to a motion to strike out?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: Yes.

Mr. Faulkner: Then with that understanding I won't object so much, your Honor.

The Court: Very well.

Mr. Houck: Q. What did you find? What eggs did you see when you went to this place?

A. I found several eggs had been broken into the receptacle, probably a mixing bowl.

Q. Did you inspect those eggs?

A. Yes, I did.

Q. What was the result of your inspection?

A. There were about 50 eggs in the bowl, and there were four or five which [259] were rotten.

Q. How many were rotten?

A. I would say four or five.

Q. Again, just what do you mean by "rotten"?

A. They were inedible, black rots.

Q. Is a black rot a type of defect which would show up on candling? A. That is correct.

Q. You say you saw some cases of eggs there. What label did those cases bear?

A. Nye & Nissen label.

Q. Did they bear an inspection stamp?

A. They did.

Q. Whose? A. My own inspection stamp.

Q. When was it dated?

A. I don't remember the exact date of the stamp.

Q. Do you recall the date in connection with the time in which you were making this third inspection?

A. Approximately three days before.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Had these eggs also been placed in the refrigerator, as you told us the others were?

A. They had been placed in a refrigeration room adjacent to the baker shop at Letterman General Hospital, 36 degrees Fahrenheit.

Q. To your knowledge, had that refrigeration room been in working condition during that period?

A. It had. I checked with the hospital engineer.

Q. Did you inspect those three cases of eggs?

A. Yes.

Q. You did inspect them? A. Yes.

Q. How?

A. By candling each individual egg in the case.

Q. Every eggs in the case? A. Yes.

Q. What did your inspection show?

A. Approximately 5 per cent of them were inedible.

Q. Again, what do you mean by inedible?

A. Rotten, stuck yolks.

Q. Are those a type of defect which would immediately be shown up in candling? A. Yes.

Q. Can you tell me whether it would obviously show up or whether it just might possibly show up?

Mr. Faulkner: We object to that. The witness testified it would show up.

Mr. Houck: Withdraw that.

Q. Where there other occasions other than these two upon which you inspected eggs, these particular cases of eggs for a third time?

A. Yes, there were.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Can you tell us in general what the results of those inspections were?

Mr. Faulkner: I object to that; too general, your Honor.

The Court: Sustained.

Mr. Houck: Q. Can you recall specific further instances similar to these two you told us about?

A. There were numerous other instances.

Q. But you don't recall any?

Mr. Faulkner: I ask that that go out, your Honor.

A. I don't recall any further. On these two occasions, however, [261] the eggs were brought back, returned to the field commissary.

Mr. Faulkner: There is no question.

The Court: Don't volunteer any statements.

Mr. Houck: What is the last question?

(Record read.)

Mr. Houck: Q. You have testified concerning eggs, Colonel Hand. Did you also inspect butter at the defendant Nye & Nissen's plant in San Francisco? A. Yes.

Q. Do you recall a specific instance upon which you inspected butter? A. No, I do not.

Q. Well, can you tell us how you would know that there was butter at the defendant's plant to be inspected?

A. I would get a call from Mr. Goddard.

Q. What would you do in response to that call?

Mr. Faulkner: We object to what he did in response to a call unless it is a specific instance.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: Fix the time.

Mr Houck: Q. Do you recall a specific instance upon which you got a call from Mr. Goddard?

A. Well, on numerous occasions from the early fall of 1941 to and including 23 June, 1944.

Q. Take a time that came in the early fall of 1941——

Mr. Faulkner: We object to that, your Honor. The court ruled in our favor. You said to specify an instance. [262]

The Court: The court indicated he might fix the time.

Mr. Houck: Q. What did you do in response to this call?

Mr. Faulkner: May we have the time and place and persons present fixed, your Honor?

Mr. Houck: Q. When was this call?

A. I would say the middle of September, 1941.

Q. Who made it? A. Mr. Goddard.

Q. Was it by telephone? A. Yes.

Q. Do you recognize—do you know Mr. Goddard's voice sufficiently well to recognize it on the phone? A. Yes, I do.

Q. What did you do in response to that call?

A. We went to the plant of Nye & Nissen to make an inspection of butter.

Q. By "we" whom do you mean?

A. The driver and my assistant and myself.

Q. Did you make any check before going to that plant?

A. We would check with the sales officer to see if the delivery had been ordered.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Would that check include finding out the grade of the butter?

A. We would ask the sales officer what score butter he ordered and how many pounds.

Q. Then you would go to the plant. What did you do there? Whom would you be met by?

A. Mr. Goddard would meet us at the loading platform.

Q. What would he do?

A. He would take us back and show us the sample of butter to be graded.

Q. What sample are you referring to?

A. Butter is churned in [263] 600-pound lots and each 60 pounds is put in a tube or card that is given a churn number. Then by cutting one sample you would get a representative sample of the 600 pounds or the entire churn.

Q. See if I follow that. Butter is churned in 600-pound lots? A. Yes.

Q. Each churn of butter——

Mr. Faulkner: We are talking about particular butter at a particular time and place. Now, you make it general.

Mr. Houck: Well, I think the matter is in the record. You are cutting 60-pound——

A. Samples.

Mr. Faulkner: We object to that.

Mr. Houck: Well, on this occasion.

Mr. Faulkner: All right.

Mr. Houck: Q. Would the particular cube be stamped? A. It would.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Would it bear a marking?

A. It would have a churn number on it and the plant's state license number from which it was manufactured.

Q. How many samples did you inspect on the particular occasion?

A. It depended on the amount of the shipment, the number of pounds in the shipment. Usually 20 samples would be graded or scored.

Q. Where would those samples be taken from?

A. They would be taken from a lot of butter in a refrigerator. [264].

Q. What I am trying to get at is, did you take more than one sample from each churn?

A. No; just one sample from each churn was graded.

Q. What type of test did you apply to these samples?

A. We applied the Organo-Lipfic test: we grade by sight, taste and smell.

The Court: I think you better spell that.

Mr. Houck: Yes, I think you better spell that for the reporter.

A. O-r-g-a-n-o L-i-p-t-i-c.

Q. Sight, taste and smell. Did you actually taste the butter? A. Yes.

Q. What was your sight test, what did that comprise?

A. A sample of butter is put on a butter trier.

Mr. Hippeli: What is that?

A. It is a small half U-shape cylindrical rod that

(Testimony of Lt.-Col. Pearl Hugh Haind.)

cuts a half circle of butter at a time; you withdraw it from a cube of butter. It is approximately 6 inches long, half-inch wide, and a quarter of an inch deep.

Mr. Houck: Q. What did you find in this particular instance?

A. By sight we made a check——

Mr. Faulkner: We object to that.

Mr. Houck: No. I assume you, of course, tasted this particular butter. What did you find were the defects?

Mr. Hippeli: Could you describe the test a little more——

Mr. Faulkner: Just a moment. When both lawyers ask questions [265] it is difficult for me——

Mr. Hippeli: I withdraw the question.

Mr. Houck: Q. Do you remember the result in this particular case?

A. Approximately 15 samples were graded and scored as being 90 score.

Q. Did you stamp the samples?

A. Yes, they were doubly stamped.

Q. Is that the same stamp you showed us before? A. Correct.

Q. Your stamp on those samples would mean what?

A. That would mean they were acceptable for Army use.

Q. Do you know the entire lot of butter was stamped? A. No.

Q. Just the samples? A. Yes.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. What happened to this butter?

A. The butter was then put on a flat and taken back to the butter-cutting room.

Q. What happened to it in the butter-cutting room, if you know?

A. Well, we would make a list of grading sheets and each sample that was completed would appear on that sheet. Then the samples were taken to the butter-cutting room.

Q. Who furnished the sheets?

A. The sheet was a master copy of the grading and it was accessible to the plant manager as well as to the Army inspectors. [266]

Q. All right. What happened to this butter when it arrived at the butter cutting room?

A. That entire churn would be taken out of the refrigerating room and it would be, as we say, cut by churn or printed by a churn.

Q. How would it be cut?

A. Say there were ten cubes, ten 60-pound buckets of butter in the churn. It would be taken out of the cube or the wooden bucket and placed in a butter printing or butter cutting machine and it would be printed into one-pound prints.

Q. By printed you mean merely cutting into one-pound prints?

A. It would be placed under pressure and a large piston would push the butter into the compartment of the machine and a one-pound mold of butter would come out and it would be cut off in one-pound prints.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Was an Army inspector there while this was going on? A. Presumably at all times.

Mr. Faulkner: We object to that.

Mr. Houck: Q. Do you know of your own knowledge in this particular case?

A. That was the existing instructions.

Q. Were you there when this butter was being cut? A. I was at this particular time.

Q. What did your inspection at this butter-cutting machine consist of?

A. We would check weigh each print as it came out of the machine and check to see whether it contained 16 ounces to the pound or not. [267]

Q. How did you check weigh?

A. With a little scale.

Q. Did you check every one-pound print that came out?

A. Probably every one in twenty, I would say.

Q. Did you maintain any watch over the butter that went into this butter cutting machine?

A. We compared each churn to see that the correct churn had been accepted on the initial cutting of the butter.

Q. You mean the number of the churn?

A. The churn number on the sample, that it should correspond with the churn, the number of samples in the churn that were taken out of the refrigerating room for cutting.

Q. What did you check it against?

A. The master grading sheet on which the churn numbers were listed.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. That is what you made up some time ago before you had finished inspecting?

A. Correct.

Q. Now, you have spot checked the one-pound prints for weight. What else would you do?

A. We would supervise the general sanitation of the butter cutting room. If a pound of butter was dropped on the floor we would see it was discarded. If there were any, say 10, 15 or 20 pounds of butter that got through that were very obviously under weight, such as weighing 14 ounces, we would ask the management to take them back through the machine or discard them.

Q. Do you have any further duties in connection with the inspection of this particular butter?

A. We saw that 60 pounds [268] were put in a 60-pound case or 30 pounds in a 30-pound case.

Q. When you say 30 pounds, you mean 30 of these one-pound prints? A. Correct.

Q. As you have testified on this occasion, were there other occasions on which you inspected butter at the defendants' plant? A. Yes.

Q. Incidentally, I don't believe I brought this up. Who would be the purchaser of this butter?

A. The U. S. Army.

Q. Is it true all of your inspections would be just on purchases for the Army and armed forces?

A. Or for the Government.

Q. On these other occasions that you made inspections, who made the initial——

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: We ask the time and place of the other occasions be fixed.

The Court: Ask whether there were other times.

Mr. Houck: Q. Were there other occasions?

A. Yes.

The Court: When was the next occasion, if you recall?

A. I don't recall it.

Mr. Houck: Q. Did anyone else call you up from the defendants', anyone aside from Mr. Goddard to make a butter inspection?

A. I don't recall.

Q. Do you know whether he did on most of these occasions? A. Yes, he did.

Q. And somebody else may have——

A. I didn't always receive the call. [269]

Q. On these other occasions upon which Mr. Goddard called you did the procedure take place that you have just outlined?

Mr. Faulkner: We will object to identifying the procedure that was outlined on a specific occasion—it is too general.

The Court: This is the time now for the jury to retire. I will hear argument from both sides on any matter you wish to take up after the jury leaves.

(The jury was then excused and after argument by respective counsel an adjournment was taken until tomorrow, Friday, January 18, 1946, at 10:00 a.m.) [270]

Friday, January 18, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

The Court: Call the roll.

(The roll of the jurors was called; all were present.)

LT.-COL. PEARL HUGH HAND,

recalled.

Direct Examination (Resumed)

Mr. Houck: Q. Colonel Hand, going back for the moment to the inspection of eggs, did the office of the Station Veterinarian at the Presidio prescribe a regular procedure to be followed by its inspectors in making inspections of eggs at the contractor's plant? A. Yes, it did.

Q. Was that procedure the one you described in detail yesterday afternoon as the one you followed when you made that specific inspection at defendant Nye & Nissen's plant? A. Yes.

Q. You stated you did make many subsequent inspections at Defendant Nye & Nissen's plant?

A. Yes.

Q. At those subsequent inspections were the defendants, or some of them, present?

A. Yes, they were.

Q. During those inspections in the presence of at least some of the defendants did you follow this procedure which you have outlined to us?

Mr. Faulkner: That is the point we argued yesterday, [271] the time, place and persons present in respect to any inspection is the foundation which

(Testimony of Lt.-Col. Pearl Hugh Hand.)

I think the Court indicated should be laid. We object to this on the ground it is incompetent, irrelevant, and immaterial, and too general, and calls for an opinion and conclusion of the witness.

Mr. Pratt: If the Court please, what is offered here is a course of procedure with which the defendants were acquainted and of which they were advised because it was done in their presence and the present question is whether that procedure which was definitely described on the occurrence in September of 1941, also occurred substantially identically in the presence of the defendants on other occasions. It is a matter of procedure and of inspection which obtained in the trade, and of which the defendants were advised. I cannot see that that is objectionable in any respect.

Mr. Faulkner: I thought we had threshed it out after the jury left. In other words, the question before the witness now is whether he followed a procedure that was done in connection with a particular transaction in the fall, I think, of 1941, or, rather, the early fall of 1941. At that time he indicated that he had received a telephone call from a particular defendant, and he did certain things in the presence of that particular defendant. There are a large group of employees in Nye & Nissen's. Who was present on the subsequent occasions has not been brought home, has not been testified [272] to. I thought the court made itself clear that the defendants were entitled to know

(Testimony of Lt.-Col. Pearl Hugh Hand.)

who was present and who was supposed to have participated in these transactions.

Mr. Houck: I understood yesterday, Mr. Faulkner, that you agreed there would be no objection to the Government establishing what the official procedure was, and that the inspectors followed it at the Nye & Nissen plant.

Mr. Faulkner: We have no objection to the colonel testifying what the procedure for inspecting eggs is, but when he tries to say that that procedure was followed by a blanket statement, we want to know when he will testify under oath that it was followed in connection with a particular transaction. I think that was clearly indicated by your Honor, and I understood that was the ruling the court made three times.

The Court: Is the matter submitted?

Mr. Faulkner: Yes, your Honor.

The Court: The objection will be sustained.

Mr. Houck: Q. You stated yesterday, Colonel Hand, that you were present once or twice a week on the average during the period you made inspections at the defendant's plant.

A. Yes.

Q. Were there other inspections by inspectors under your supervision at which you were not present? A. Yes.

Q. Can you give us a rough estimate of the proportion of these times that you were not present?

A. Approximately at [273] half the inspections.

Q. Yesterday also you stated that on this occa-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

sion on which you made the destination inspection at the Presidio, I think it was September, 1941—is that correct? A. Yes.

Q. That the truck of Nye & Nissen was unloaded by an Army enlisted man. Is that correct?

A. Occasionally an enlisted man would help the driver.

Mr. Faulkner: We object to that, your Honor. The testimony yesterday was that on that particular occasion when the Colonel inspected at the point that the delivery was made an enlisted man in relation to that delivery unloaded the eggs.

The Court: State as near as you can who was there, who was present.

Mr. Houck: Q. You said usually, in response to my question as to what happened on that occasion, you said usually an enlisted man would unload the truck. I am trying to find out what happened on that particular occasion.

Mr. Faulkner: The Colonel testified yesterday—you asked him the question who unloaded the truck, and he testified that an enlisted man unloaded the truck.

Mr. Houck: And he used the word "usually," which is not tied into——.

The Court: If there is any question about it, clear it up. [274]

Mr. Houck: I would like to do that.

Q. Do you recall that specific occasion, Colonel?

A. Yes, I can recollect.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Just a moment. May I have the particular time fixed?

The Court: September, 1941.

Mr. Houck: Q. Where was this unloading done?

A. At the dock of the field commissary, Presidio at San Francisco.

Q. Were you present at the unloading?

A. Yes.

Q. Who else was present?

A. There were two enlisted men.

Q. And I assume the truck driver of the defendant?

A. Yes, the truck driver of the defendant.

Q. Who, if you recall, unloaded that particular truck?

A. The truck driver unloaded the plant truck. The enlisted man unloaded the small commissary, the field commissary truck. That is what I had reference to yesterday.

Q. Do I understand you unloaded from the defendant's truck to an Army truck?

A. To a small truck that carried the eggs around the commissary.

Q. Your testimony on the inspection of eggs yesterday was also limited to purchases by the Presidio. During your period of service as station veterinarian at the Presidio, did you or your inspectors under you also inspect Army purchases for overseas shipments? A. Yes. [275]

Q. Did you have occasion to inspect any such

(Testimony of Lt.-Col. Pearl Hugh Hand.)

purchases at the defendant Nye & Nissen's plant?

A. Yes, we did.

Q. Do you recall a specific purchase for overseas shipment at the defendant Nye & Nissen's plant at which you participated?

A. There were so many that I do not recall any specific incident.

Q. Well, can you tell us whether, under the Army inspection procedure for overseas shipment a second inspection would occur at destination?

Mr. Faulkner: The witness has no recollection of a definite occasion.

The Court: Read the question.

(Question read.)

Mr. Faulkner: It calls for an option and conclusion of the witness.

The Court: Overruled. Answer "Yes" or "No."

A. I don't remember the question.

The Court: Read the question.

(Question read.)

Mr. Houck: By destination I mean the dock where it is to be loaded onto the ship.

Mr. Faulkner: I think all this procedure is outlined in writing to guide the colonel.

Mr. Houck: Let's find out about it.

Q. Are there Army regulations setting up the procedure? A. Not at that time, no. [276]

Mr. Faulkner: What time?

Mr. Houck: Well, at the time they were promulgated. Was there a period during which your office inspected overseas shipments when there were

(Testimony of Lt.-Col. Pearl Hugh Hand.)

no regulations in effect governing this type of inspection? A. Yes.

Q. During that time did your inspectors, and you when you made the inspections inspect overseas shipments at the dock when they were being, or prior to the eggs being loaded on the ship?

Mr. Faulkner: There isn't any way in the world he could testify to what his inspectors did.

Mr. Houck: Q. What did you do?

A. No.

Q. You did not make such an inspection?

A. No.

Q. Are you familiar with the Army purchasing procedure relating to the type of cases and packing required for overseas shipment of eggs purchased by the Army? A. Yes.

Q. Can you tell us what those requirements are?

Mr. Faulkner: We object to that on the ground the regulations speak for themselves. They are not in evidence.

Mr. Houck: Q. Are there regulations covering that specific problem in detail? A. Yes.

Q. Were those regulations in effect throughout your period of service at the Presidio?

A. Yes.

Q. Will you bring those regulations, Colonel, with you this noon, or tomorrow morning? Does the court hold sessions on Monday? [277]

The Court: If you gentlemen wish to go ahead tomorrow you may go ahead.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: Monday, was it? I don't think anyone has a desire to go ahead tomorrow.

The Court: Well, I want to accommodate you if you wish. When we adjourn today we will adjourn until ten o'clock on Monday morning.

Mr. Houck: Q. Will you bring those regulations, Colonel, on the next morning we hold court?

Mr. Faulkner: Why not this afternoon?

Mr. Houck: Q. Where are these regulations?

A. They are at the Presidio in San Francisco.

Q. Would it be possible to obtain them during the lunch hour and still give you a chance to eat lunch?

A. That I couldn't say. I would have to go out there.

Mr. Houck: Well, I don't think we need them before Monday.

Q. Yesterday, Colonel, you related in detail what you did on a certain occasion when you inspected butter at the defendant's plant. I will ask you whether or not the office of Station Veterinarian at the Presidio prescribed a regular procedure to be followed by inspectors in making inspections of butter at the contractor's plant? A. Yes.

Q. Was that prescribed procedure the same as you described to us in detail yesterday?

A. Yes.

Mr. Faulkner: Just a minute. I ask that the answer go out. [278] It calls for the witness' conclusion. The prescribed procedure is reduced to writing. It is not in evidence. It has not been pro-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

duced. It calls for the opinion and conclusion of the witness.

The Court: Read the question.

(Question read.)

The Court: If he knows he may answer: Objection overruled.

Mr. Faulkner: Your Honor, the other factor is not before the court. He said——

The Court: The court has ruled.

Mr. Faulkner: Exception.

The Witness: A. Yes.

Mr. Houck: Q. I think I cut you a little short, yesterday, when you were describing the Organo-Liptic test. Will you describe that test as applied to butter in somewhat more detail?

Mr. Faulkner: He described it yesterday; taste, touch and smell.

Mr. Houck: Those three words were all the description that is in the record. Any objection to the question?

Mr. Faulkner: Asked and answered.

Mr. Houck: Yesterday all the Colonel stated was that it was a taste, smell and sight test. I would like to find out what the test was.

The Court: Were there any other tests?

The Witness: I started to describe the test.

The Court: Proceed.

Mr. Houck: Q. What is the sight part of the test?

A. I think we had drawn the sample of butter

(Testimony of Lt.-Col. Pearl Hugh Hand.)

with a butter trier and turned the butter trier over, and ascertained the amount of leakiness in the body, how much moisture in the butter. That is ascertained by the size of drops of moisture on the back of the trier. We turn the butter over and examine it in daylight. We check the body to see if it is mottled in color, see if it is greasy.

Q. In connection with leakiness, what type of butter would not be up to standard in connection with that factor?

A. Leaky butter would be butter that has been manufactured from a poor grade of cream, containing B and C grade cream, stale cream.

Q. How would that be observed?

A. Well, one indication would be leaky body, the cream had been churned and the butter had been improperly worked.

Q. Would your sight test develop any other factor?

A. Looking at it for indications of sand, splinters of wood, hair in the butter, which would make the butter no grade.

Q. Any other factor that was involved in this sight test? A. That is about all; the color.

Q. How about the taste test what would that consist of?

A. We would smell the butter to catch any foreign odors such as barny odor, cheesy odor, yeasty odor, chemical washing [280] powder, kerosene that would grade the butter no grade.

Mr. Hippeli: That was a smell test?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. Yes. The taste test for butter, we put it in our mouths.

Mr. Houck: Q. What factor would be developed by a taste test?

A. We can check to ascertain whether the cream was stale, and again barny, had an onion flavor, kerosene, chemical washing powders.

Q. In relation to butter, also were there occasions when your inspectors made inspections at the defendant plant at which you were not present?

A. Yes.

Q. Can you tell us or give us a rough estimate of about how many times?

Mr. Faulkner: We will object to that as calling for an opinion of the witness. He could not testify to it, to the number of times, if he was not present.

Mr. Houck: Let me finish the question.

Q. Can you give us a rough estimate as to the proportion of the times your office made these inspections that you were present?

A. Approximately half. [281]

Q. Yesterday in describing the procedure followed on this occasion we brought you down to the time the one-pound prints were placed into the case. You said the inspector watched to determine whether or not 30 or 60, as the case may be, of these pound-prints actually went into the case?

A. That is right.

Q. Did you have any further duties in connection with that particular butter?

Mr. Faulkner: We object to the generalities.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

The testimony yesterday related to a specific occasion when the Colonel was there inspecting butter.

Mr. Houck: I am perfectly willing that this question be limited to that one occasion in September, 1911, that you told us about yesterday.

The Witness: Yes.

Mr. Houck: Q. You said the inspector wanted to see——

Mr. Faulkner: We have no objection to asking him to state everything he did on that occasion.

Mr. Houck: I do not want to take the time. I would like to start where we stopped late yesterday afternoon and find what further inspection or matters of that nature were carried on with relation to this particular butter on this occasion after the one-pound prints were put into the case.

The Witness: After ascertaining that the case had the proper number of pounds in it, then it was closed, and if the order were to call for wire strapping, it was wire strapped. It was [282] stamped with a Veterinary Corps inspection stamp.

Mr. Houck: Q. You say wire strapping; what do you mean by that?

A. Well, a specified guage of wire was placed around the box and it was strapped with a strapping machine, which makes it tie in the wire and breaks it at the same time. The wire is fed through the machine placed on top of the bars.

Q. Will there be any seal on this wire strapping?

A. The stamp would be placed on the tie in that wire with the name of the inspector.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. By the tie in the wire, what do you mean?

A. It is twisted several times, starting in the middle, and twists out either side to right and left.

Q. What sort of stamp would be applied to that tie?

A. The Veterinary Corps inspection stamp would be placed on it. The name of the inspector would be placed on the tie.

Q. Is this the stamp that you gave us a facsimile of yesterday? A. Yes.

Q. Do you know where these particular cases went after they were stamped?

A. They were placed in the refrigerating room until the time the delivery was to be made.

Q. The refrigerator room of the Nye & Nissen plant? A. That is correct.

Q. Do you know how the delivery was made with relation to this particular butter?

A. By the Nye & Nissen delivery truck.

Q. Did you also inspect cheese at the defendant's plant? A. Yes. [283]

Q. Does the office of the station veterinarian at the Presidio have a prescribed and regular procedure to be followed by its inspectors in making inspections of cheese at the contractor's plant?

A. Yes.

Q. Will you describe what that procedure is?

Mr. Faulkner: We object to that upon the ground that the regulations speak for themselves. They are all delineated in the regulations.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Houck: Q. Are there regulations covering this procedure?

A. Not at that time specifically; no.

Q. What was the procedure followed at that time—prescribed at that time?

Mr. Faulkner: That is calling for the opinion and conclusion of the witness.

The Court: If he knows he may answer. The objection will be overruled.

The Witness: A. Since prescribed inspection was mine, I would set it up. We took a cheese trier——

Mr. Houck: Q. This would be at the contractor's establishment?

A. At the contractor's establishment. We would be sure the cheese had been out of the refrigerating room long enough so that it would be tempered properly. It would not be cold. Cheese that is cold cannot be scored. Then we would place a trier into the cheese. We would cut a half a plug, cutting in with a trier. Then we would turn the trier over [284] one-half turn and pull the plug out. We would cut a clean plug. If we had gone clear around with the trier we would seal gas holes and yeast holes in the cheese, which lowers it in grade. I have withdrawn the plug from the sample of cheese.

Q. What do you do with that plug?

A. We take a small portion of it and roll it between our thumb and fingers. As it mellows with the body heat we can check the consistency of the

(Testimony of Lt.-Col. Pearl Hugh Hand.)

body of the cheese. We can feel if it has any grains of sand, salt, splinters of wood, or foreign matter in it, and as it moves between our thumb and fingers we can feel just how smooth it is. If it is green cheese, it will roll up in the middle, balls like beebees or shot. We can tell approximately how old a cheese is by that. Also by warming it up we can get a slight odor and tell if there are any foreign odors in it.

Q. What type of samples do you apply this test to?

A. I do not understand that question.

Q. How is cheese marked?

A. It is marked by vat numbers, and on each cheddar where the vat number appears you have a state license number. Each plant that makes cheese is licensed by the state in which the plant is operated. That is stamped on there at the time the cheese is manufactured.

Q. Do I understand, then, each vat is divided into a number of cheddars, did you say?

A. It has a number of cheddars from each vat.

Q. What is a cheddar?

A. A cheddar may be either a 25-pound [285] mould of cheese or it may be a 75-pound mould of cheese.

Q. Each cheddar, you said, was stamped with a vat number?

A. Yes, by state law.

Q. How many samples would you take from each vat number?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

A. One sample from each vat number; usually three cheddars game in a box.

Q. And then you would apply this test that you speak of to a cheddar?

A. We applied the sight, smell and taste test to cheese.

Q. Can you describe the cheddar in dimensions to us? How does it come out?

A. It weighs 25 pounds. It is approximately one foot and a half across, I would say, and from six to seven inches thick, and it is round.

Q. Is it oblong? A. Round.

Q. In the form of a wheel?

A. It is in the form of a wheel or cylinder, shaped. It is pressed in a bandage, a cheesecloth bandage, and that is dipped in paraffin. Cheese is graded according to finish, how well the bandage is placed over it, whether there is any cheese sticking out through the bandage, which would naturally be sturdy, and how smooth the paraffin is aplied to the bandages, whether it has cracked, broken, or is chipping. That applies to cheese that is too warm when it is paraffined. When it cools off the paraffin will chip.

Q. Is there any weight test applied to this cheese?

A. Yes, each cheddar should weigh approximately 25 pounds. [286]

Q. I mean does your inspector in his procedure apply any weight test?

A. No, not in early 1941.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. Was there one applied later? A. Yes.

Q. About when was the procedure adopted?

A. Early spring of 1944.

Q. What type of stamp was applied to each cheese at the conclusion of this inspection?

Mr. Faulkner: Which inspection?

Mr. Houck: This regular procedure, inspection procedure.

Mr. Faulkner: Do you mean before regulations governing it or after?

Mr. Houck: Q. Well, it is procedure you are telling us about.

A. Each cheddar in the box——

Mr. Faulkner: That is the vice of this examination, your Honor. The witness is asked to give the method of grading cheese prior to regulations. Then he is asked if there were regulations, and he said yes, after a certain date in 1944.

Mr. Houck: I am willing to limit this question to this period when no official records had been promulgated. Is that sufficient?

Mr. Faulkner: That is satisfactory, just so that we know what he is talking about.

Mr. Houck: Q. Is the cheese stamped if satisfactory?

A. Each cheddar sample and every box of three cheddars appears stamped. [287]

Q. How is it stamped?

A. With the Veterinary Corps inspection stamp on it. On the outside of the box there are two stamps placed.

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. The stamp which was introduced in evidence yesterday, and which you produced? A. Yes.

Q. Is the inspector present until the cases or boxes are sealed?

Mr. Faulkner: Just a moment. I object to that. He cannot say whether an inspector was present unless he himself was present.

The Court: Under the procedure at this time——

Mr. Faulkner: Is he supposed to be present?

The Court: Q. Is he expected to be present?

A. Yes.

Mr. Houck: Does his inspection involve determining whether or not the three cheddars are actually put into the box? A. Yes.

Q. I do not remember. Did you testify that the stamp is placed on each cheddar or on the box?

A. It would be placed on each cheddar of those samples that were graded, and on the box, on all the boxes that are accepted.

Q. On all the boxes of this lot, then, your inspection stamp appears, is that right?

A. Yes, but not on all the cheddars; just the samples graded.

Q. You testified yesterday that you had certain inspectors at Petaluma. Did you yourself have any occasion to inspect purchases from the defendant's company at Petaluma? A. Yes. [288]

Q. During those occasions did you contact any of the defendants at Petaluma? A. No.

Q. Did you talk to any representatives of the defendant company?

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness; your Honor.

Mr. Houck: Q. Who did you contact at Petaluma?

A. Mr. Langworthy, the manager of the plant.

Q. Now, you said the manager of the plant. Did you discuss Mr. Langworthy with any defendant at any time? A. Yes.

Q. What was this occasion? When was it?

A. Approximately the middle of March, 1943.

Q. Where did it take place?

A. At the plant of Nye & Nissen in San Francisco.

Q. Who was present?

A. Mr. Moncharsh and Mr. Goddard.

Q. And yourself? A. Yes.

Q. What was said during that time with specific reference to Mr. Langworthy?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, and hearsay as to the remaining defendants.

The Court: It is limited to those at this time that were a part of the——

Mr. Faulkner: And under the first count, your Honor.

The Court: Yes.

Mr. Hippeli: I do not think it should be limited to the first count, your Honor. [289]

Mr. Faulkner: You have a count concerning May 1944. You can't prove that by something that happened in March, 1943

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Mr. Hippelli: I think the conversation may show the authority of Mr. Langworthy to act up in Petaluma. If Mr. Langworthy was acting in Petaluma under the direction of some of the defendants, I think that evidence is material on possible deliveries that may be made under the substantive counts to the ships from Petaluma.

Mr. Faulkner: I respectfully submit that that rule would apply in a civil case but has no application in a criminal case. Employees of a plant in Petaluma cannot bind by subsequent conduct at which the defendants were not present men in San Francisco.

The Court: I will limit this conversation to those who were present at that time. Read the question.

(Question read.)

Mr. Faulkner: Excuse me, your Honor. If that means it is admissible against those present on the substantive charges which occurred according to the indictment in March, 1944, we except to the ruling.

The Court: Note an exception. Read the question, Mr. Reporter.

(Question read.)

Mr. Houck: Q. Was Mr. Langworthy's name mentioned?

Mr. Faulkner: Just a moment. You have a question. We ask [290] that it be answered.

The Witness: They so indicated that Mr. Lang-

(Testimony of Lt.-Col. Pearl Hugh Hand.)

worthy, was the manager of the plant in Petaluma.

Mr. Faulkner: We ask for the conversation.

The Court: (To the witness): What they indicated is a conclusion. State the conversation as near as you can remember.

The Witness: Mr. Moncharsh said that in going to Petaluma on supervisory capacity inspections Mr. Langworthy is the gentleman in charge of the plant to whom you are to report.

Mr. Houck: Q. Was he speaking to you in that conversation? A. Directly to me.

Q. And you say Mr. Goddard was present?

A. Yes.

Mr. Hippeli: Q. Did Goddard say anything at this time? A. No.

Mr. Houck: Q. Did Goddard say anything at this time? A. No.

Mr. Faulkner: He said "No".

Mr. Houck: That is all.

Mr. Faulkner: I will cross-examine the Colonel when he brings the regulations, and I ask the Court if he would direct the witness to bring the regulations relating to cheese at the same time he brings the regulations relating to butter.

The Court: Very well.

Mr. Faulkner: Q. Will you do that, Colonel, please? A. Yes, I will. [291]

Mr. Houck: No cross-examination?

Mr. Faulkner: Not until you finish your direct.

Mr. Houck: I said that is all the direct examination.